Supreme Court, U.S.
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No. 99-415

In The

Supreme Court of the United States

PETE SNYDER,

Petitioner,

v.

THE UPJOHN COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTION PRESENTED

Whether the district court abused its discretion in applying the criteria in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) to the particular facts of this case and excluding the causation opinions of Petitioner's expert witnesses.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Pete Snyder was plaintiff-appellant below. Respondent The Upjohn Company was defendant-respondent below. Pursuant to S. Ct. R. 29.6, Respondent notes that in June 1996 the name of The Upjohn Company was changed to Pharmacia & Upjohn Company. Its parent company, a public-owned corporation chartered in Delaware, is Pharmacia & Upjohn, Inc.

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STATEMENT OF THE CASE

This case involves the district court's straight-forward application of the criteria in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) to exclude the causation opinions of plaintiff's expert witnesses. In the paragraphs below, Respondent respectfully corrects the most serious factual misrepresentations contained in the Petition.

The "misfortune" Petitioner characterized as "an accident with my wife," Pet. at 2, is more accurately described as follows. On March 15, 1987, Petitioner strangled his wife with his own hands until she fell unconscious. He pressed a pillow over her face and smothered her until she appeared lifeless. He first telephoned his lawyer and then called 911 to report that his wife was "sick." Petitioner's wife died two days later. Petitioner was charged with first degree murder and pleaded guilty to the lesser-included offense of voluntary manslaughter. He served five and one-half years of an eleven-year sentence.

Before Petitioner killed his wife, he had been charged with assault with a deadly weapon in an unrelated August 15, 1985 incident. Petitioner was convicted of that charge by unanimous jury verdict on August 3, 1988.

Shortly after Petitioner pleaded guilty to killing his wife, her estate brought a civil suit against him for her wrongful death. *Aronoff v. Snyder*, No. WEC 114365 (Super. Ct. Los Angeles Cty., Cal. filed 6/18/87). In that civil wrongful death case, Petitioner admitted that there was no substantial controversy regarding the estate's contention that he had *intentionally* killed his wife. On

December 22, 1988, the court granted summary adjudication against Petitioner, specifically finding that there was no triable issue that he had intentionally killed his wife. The issue of damages was tried to the court, which entered its judgment against Petitioner on September 27, 1989 for both actual and punitive damages in the wrongful death of his wife.

After his release from prison in 1993, Petitioner filed this lawsuit claiming that the alleged ingestion of the prescription sleeping pill Halcion® caused him to kill his wife.

Petitioner's frequent references to his *in pro per* status, Pet. at 3, 4, 5, 6, 7 and 11, should not leave the false impression that he was without benefit of counsel in preparing his case, particularly his expert witness case which is the subject of the Petition. Petitioner was represented by able counsel during discovery and depositions in this case. His multiple expert witnesses were recruited, prepared and presented by his attorneys Robert Feinstein, Esq., Law Offices of Robert Feinstein, Woodland Hills, California, and Herbert Hafif, Esq., and Larry A. Sakey, Esq., Law Offices of Herbert Hafif, Claremont, California.

Petitioner's counsel withdrew from the case shortly after they learned of a fact witness who would testify regarding physical injuries sustained by Petitioner's wife prior to the killing, as a result of being beaten by him, as well as Petitioner's use and abuse of alcohol, cocaine and prescription drugs. Apparently Petitioner concealed these facts from his own attorneys. After they contacted the

fact witness and verified his testimony, both law firms representing Petitioner withdrew from this case.

The Upjohn Company v. Scovish, 519 U.S. 815 (1996) (*cert. denied*), Pet. at 4, Appendix I, cited by Petitioner, concerned the discoverability of attorney work-product and has no relevance to the bases of Petitioner's experts' opinions or their exclusion from evidence under *Daubert*. The database at issue in *Scovish* is a computerized index of company documents created by Upjohn's outside litigation counsel to facilitate expeditious response to requests for production of documents by plaintiffs in product liability cases. The database does not contain scientific data relevant to the *Daubert* inquiry, i.e., it does not include data from controlled clinical and epidemiological studies, nor is it or could it be relied upon by experts in the scientific community to reach valid scientific opinions. Rather, the database is a litigation tool designed and created by outside litigation lawyers to identify and locate internal company documents to respond to discovery requests and prepare for trial. The underlying documents themselves have been produced for inspection and copying many times in product liability cases, including this case. Notwithstanding its finding that the database is attorney work-product, a Connecticut state trial court ordered that parts of the database be produced to the plaintiff. The Connecticut appellate courts declined to review the substance of that discovery order and this Court denied certiorari. *Scovish* has no relevance to this case because Petitioner did not request the database in discovery. There is nothing in the *Scovish* order that states or even implies that Upjohn "suppressed" information from anyone.

The premise presented by Petitioner is that Upjohn was "shown to have systematically denied the scientific community access to negative information about one of its products." Pet. at 9. The district court made no such finding. Halcion® has been the subject of more than 400 clinical and epidemiological studies. Results of all studies conducted by Upjohn were made available to Petitioner, his counsel and his experts. Upjohn fully and completely provided discovery in this case, allowing Petitioner's counsel to review Upjohn's files that contain this scientific data. These files are maintained, pursuant to Food and Drug Administration regulations, in orderly categories and are so produced for inspection and copying in litigation. They are produced for attorney review in a conference room setting at Upjohn's Kalamazoo, Michigan office, not in a warehouse. In addition, the scientific data on Halcion has, in large part, been published in peer-review medical journals easily accessible to Petitioner's expert witnesses. Petitioner's claim that his expert witnesses were denied access to scientific data regarding Halcion and that such denial was the result of Upjohn's acts was and is supported by no facts.

Petitioner's charge of "illegal and unethical practices" by Respondent's counsel, Pet. at 11, in this or any other matter has no basis in fact. No such claim and no fact or evidence to support such claim was presented to the trial court. Such irresponsible recitals fall far beneath even the lowest standard of advocacy that this Court or any court should tolerate, much less encourage.

REASON FOR DENYING THE WRIT

In this case, the district court applied the criteria set forth in *Daubert* to exclude the causation opinions of plaintiff's expert witnesses. The Petition does not even purport to satisfy any of the considerations governing review on certiorari set forth in S. Ct. R. 10. It identifies no circuit conflict and no recurring important question of federal law. Read most charitably, the Petition simply complains about the district court's exercise of discretion in determining the admissibility of evidence under undisputed standards. Such an intensely fact-bound question – arising on a unique record – does not merit this Court's review.

CONCLUSION

For the reason stated above, the Petition should be denied.

Respectfully submitted,

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